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PROBLEMS WITH WILLIAMS/COLEMAN SUBSTITUTE

1. Problem: Requirement that "the Chairperson shall ensure that artistic excellence and artistic merit are the criteria by which applications are judged, taking into consideration general standards of decency and respect for the diverse beliefs and values of the American public" and requirement that regulations and procedures established by the Chairperson "shall clearly indicate that obscenity is without artistic merit, is not protected speech, and shall not be funded." Stipulation that projects "that are determined to be obscene are prohibited from receiving financial assistance."

Comment: "General standards of decency" is too vague, as is "diverse beliefs and values of the American public." Does this mean funded work cannot be offensive? Offensive to whom? Catholics? Jews? women? blacks? members of the American Family Association?

Some work funded by the NEA may offend some people. Offensive and indecent speech, unlike obscenity, is protected speech. Ulysses, The Grapes of Wrath, Huckleberry Finn, and The Catcher in the Rye, all offended some people. They ~~will~~ offend some people, but all are considered classic.

Requiring the Chairperson to ensure the above and requiring applicants to certify "compliance with this Act" (page eleven), will send a chill through the artistic community. Including the above language in the Act constitutes prior restraint and will lead to self-censorship.

The language regarding obscenity will confuse artists. Artists are not lawyers or politicians and, when reading "obscenity...shall not be funded" in combination with the definition of "obscene" (page 6), will have difficulty understanding that, under this Act, the determination of obscenity is left to the courts.

Both the National Council on the Arts and the House Appropriations Committee have recommended that compliance forms certifying that work will not be obscene be discontinued.

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Action needed: Strike the language beginning on page 8, line 10 ("taking into consideration...") through line 21. Strike the definition of "obscene" (page 6, lines 12-23)

Note: There already is language added to the Declaration of Findings and Purposes referring to "the fostering of mutual respect for the diverse beliefs and values of all persons and groups" (page 3) and Government being "sensitive to the nature of public sponsorship." The Declaration is the appropriate place for such language.

2. Problem: Requirement that the Chairperson, in making distributions of financial assistance in installments, shall ensure that "the recipient...is complying substantially with this section and with the conditions under which such assistance is provided to such recipient." (page 12, line 15 through page 13, line 2)

Comment: By requiring the Chairperson to ensure compliance before making final payment of funds to grant recipients, the door is opened for the Chairperson to make determinations on obscenity. This contradicts the intent of the Act which is to leave such determinations to the courts.

Action needed: Specify that in ensuring compliance the Chairperson is not intended to ensure compliance with obscenity standards, that these determinations are to be left solely to the courts.

3. Problem: Requirements for detailed descriptions, timetables and interim reports (page 11, lines 7 through 18).

Comment: Currently, these requirements are not in effect for creative writers applying for and receiving grants. Individuals applying for fellowships submit manuscripts only, along with a history of publications to establish eligibility. No detailed descriptions and no interim reports are required. Grants are awarded solely on the basis of literary merit. The requirements do not make sense for individuals receiving grants, since the purpose of the grant is to buy time for the writer to do work. Writers should be free to use that time to create the best possible

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work and should not feel bound to create a certain amount of work, according to a timetable. One can imagine a writer who, at the time it is necessary to submit his interim report, has written 200 pages of his novel. It may not be until after the interim report is filed and after further revision and reflection, that the writer knows whether he has completed one-half or two-thirds of his book, or if the entire 200 pages will have to be rewritten. By its nature, creativity is unpredictable.

Action needed: Exempt writers from these requirements.

4. Problem: Redistribution of funds outlined on page 30, lines six through 15, the effect of which would be to decrease federal portion of NEA appropriations from 80% to no more than 65% by 1993.

Comment: In order for the NEA to retain its leadership role, the Federal share of NEA funds cannot be reduced. (See attached sheet on "Why we oppose the Coleman/Gunderson plan"). Sufficient study has not been done and an adequate case has not been made for assigning additional NEA funds to state or local agencies. While the goals of the "access package" are laudable, we are concerned that current program priorities will be damaged at the expense of reaching these goals.

Action needed: Substitute language from Pell-Hatch compromise bill which calls for a study to be undertaken by the Federal Council on the Arts and Humanities to consider the roles of federal, state and local support for the arts. The study would be submitted to Congress before any steps are taken to reorganize the NEA in such a way that would reallocate significant amounts of federal funds to state or local arts agencies

5. Problem: Requirement that the National Council on the Arts "shall make recommendations to the Chairperson concerning the amount of financial assistance the Chairperson shall provide with respect to each such application the Council recommends for approval."

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Comment: The intent of this requirement appears to be to remove the panel's responsibility to recommend funding levels for projects, and to charge the panels solely with recommending projects which have artistic excellence. Many factors go into recommending funding levels: artistic excellence, applicant's ability to carry out the project, fiscal responsibility and support from other sources for the project. The peer panels are in the best position to make these careful and time-consuming evaluations after reviewing materials from the applicants and conducting a thorough discussion among panelists.

Given the volume of applications submitted, the National Council on the Arts will only be able to give cursory consideration to individual applications. The National Council will not have the time to analyze carefully on a grant by grant basis, so that standardization of grant amounts may become the norm: in some cases this may lead to more money being awarded than an organization can make good use of. By giving the National Council on the Arts the responsibility for setting funding levels without panel recommendations as to those levels, government funds may, in some cases, be wasted.

Action needed: Clarify that the above language does not preclude panels from recommending funding levels, subject to approval by the National Council on the Arts and ultimately by the Chairperson.

6. Problem: Prohibiting the Chairperson from approving applications "with respect to which the Council makes a negative recommendation."

Comment: The NEA would be made more accountable if final decisions on applications are made by the Chairperson. By removing the Chairperson's ability to approve applications not recommended by the Council, accountability is diffused. One of the goals of the Act is to broaden the perspective of the review process; adding knowledgeable lay persons to panels will help in this regard.

Action needed: Strike the language beginning on page 20, line 20 through page 20, line 25.

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7. Problem: The language regarding the Arts in Education initiative does not specify that the initiative will not be implemented until the NEA's appropriation exceeds \$175 million..

Comment: While the goals of the Arts in Education initiative are commendable, we are concerned that current program priorities will be damaged at the expense of reaching these goals.

Action needed: Do not implement the Arts in Education initiative until the Endowment's appropriation exceeds the \$175 million mark (Pell-Hatch language).

8. Problem: The Act does not specify that sanctions shall be applied only when a conviction is handed down in a state in which the project was produced or which was described in the grant application as a site for the project.

Comment: By not specifying that the obscenity conviction must be handed down in a state in which the project was produced or which was described in the grant application as a site for the project, the Act opens the door for sanctions to be applied against a writer who writes a book in New Jersey and who is successfully prosecuted in another state whose "community standards" differ from New Jersey's.

Action needed: Adopt Pell-Hatch compromise language in this regard.